

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

October 15, 2015

Alan Berger  
Law Offices of Alan Berger  
95 South Market Street, Suite 545  
San Jose, CA 95113

SUBJECT: Heron Bay HOA Amendment Request; BCDC Permit Application No. 1992.057.02  
("Permit") and Enforcement Case No. ER 2014.015

Dear Mr. Berger:

Thank you for your application dated September 16, 2015, received in this office on September 17, 2015, requesting permission on behalf of the Heron Bay HOA to: (1) install and maintain BCDC public access signage on Bayfront Drive; (2) install bicycle sharrows along the roadbed of Bayfront Drive; (3) build an entry kiosk within the Lewelling circle "bulb planter area"; (4) install "welcome signage" on entry kiosk and the approach; (5) install benches and trash receptacles in the public access area (location not specified); and (6) install 15 daytime parking spaces along Bayfront Drive for public shoreline access. This request is your proposal for resolving the Permit compliance issues at Heron Bay HOA, in the city of San Leandro, Alameda County.

Our review of the application has determined that it is incomplete pending the submittal of the following items:

1. **Signage.** Please add two "Bicycle Speed Limit 15 MPH" signs, as shown on page 7 of BCDC's Shoreline Signs Guide to your signage plan: one sign shall be placed where Lewelling Circle and Bayfront Drive intersect to be viewed by cyclists heading west, and the other sign shall be placed at the intersection of Harbor Way and Bayfront Drive for cyclists heading east.
2. **Bicycle Sharrows.** Thank you for proposing to install and maintain bicycle sharrows in lieu of the bicycle path. Please revise your proposal and Exhibit A of your amendment request to include bicycle sharrows headed both directions on Bayfront Drive.
3. **Proof of Adequate Property Interest.** BCDC staff understands that the HOA does not presently hold an adequate property interest for the development proposed at Lewelling Circle, which is owned by the City of San Leandro, including but not limited to the entry kiosk and welcome sign. Please submit documentation, such as a copy of a grant deed or long-term lease, that demonstrates the HOA has adequate legal interest in the property, or a letter from the property owner, City of San Leandro, joining the HOA as a co-applicant in this amendment request.

4. **Local Government Approval.** Please submit all the relevant documentation that clearly indicates all the local government discretionary approval has been received by the HOA from the City for the entry kiosk, public shore parking on Bayfront Drive, and any other proposed development located on City property that requires BCDC authorization.
5. **Benches and Trash Receptacles.** Please clarify where you are proposing to locate the benches and trash receptacles that are proposed in items 5 and 6 of your amendment request. BCDC staff is unclear where you are proposing to locate these new amenities and is unaware of the easement you refer to in your request.
6. **Public Access Area.** Please revise Special Condition II.F.1 (Public Access Area) to include areas owned by Heron Bay HOA, including the square footage of the area. Please also specify the public access area, including the square footage, owned by City of San Leandro, that Heron Bay HOA is required to maintain pursuant to the agreement that was made between Citation Homes and City of San Leandro.
7. **Permit Exhibit.** Please provide a draft of a revised Exhibit A for the Permit that clearly shows the as-built public access area required by Special Condition II.F.1, consistent with the revisions requested above in item 6.
8. **Permanent Guarantee.** Thank you for agreeing to complete the Permanent Public Access Guarantee required by Special Condition II.F.2 (Permanent Guarantee). Please revise Special Condition II.F.2 to reflect the area owned by Heron Bay HOA to be permanently guaranteed, as described by Special Condition II.F.1 (consistent with the revisions requested above in item 6 of this letter). The permanent guarantee cannot be completed until this amendment is issued, however a draft instrument can be submitted to BCDC counsel at anytime. Enclosed are the template CC&R documents and instructions for completing the permanent guarantee, which can also be found under the "Applications, Forms, and Fees" link on our website.
9. **Public Notice.** Please find enclosed the completed "Notice of Application" which the Commission's regulations require to be posted at or near the project site in a prominent location before a permit application can be filed. Please post the Notice so that it will be visible to the members of the public, complete the form that certifies that you have posted the Notice, and return the form to the Commission's office.

Until the above-mentioned information is submitted and reviewed for adequacy, your application will be held as incomplete.

The following two items are not necessary to file your amendment request as complete. The first item is informational and the second requires your immediate attention:

1. **Assignment.** Special Condition II.K (Permit Assignment) of the Permit states:

*Prior to entering into any agreement to sell or otherwise transfer any interest in the property to another party, the permittee shall provide the party with a copy of this permit and shall call attention especially to the provisions regarding public access. The transferee shall agree in a written statement to the effect that he or she has read and understood the conditions of the permit and agrees to be bound by all terms and conditions hereof.*

In your amendment request, you claim that Citation Homes, the predecessor in interest to the Permit, never referenced the Permit when it turned control of the site over to the Heron Bay HOA. You allege further that Heron Bay HOA "had no knowledge of the existence of the Permit nor any alleged failures to comply until mid-summer 2014". Under Special Condition II.K of the Permit, Citation Homes had an affirmative duty to provide Heron Bay HOA a copy of this permit and the HOA was required to agree in a written statement that the entity read and understood the conditions of the permit and agreed to be bound by all terms and conditions hereof. Even if Citation Homes did not provide actual notice of the Permit to Heron Bay HOA, it did provide constructive notice of the Permit and its obligations through recording the Permit with County of Alameda on all of the property subject to the permit, which you acknowledge as having occurred in your amendment request.

2. **Maintenance.** Special Condition II.F.4 (Public Access Maintenance) of the Permit states:

*All areas and improvements required by Special Condition II.F.3, including walkways, signs, benches, landscaping, and trash containers shall be permanently maintained by, at the expense of, the permittee, and assignees, subleases, or other successors in interest of the project. Maintenance shall include, but not be limited to, repairs to all hardscape surfaces, replacement of any trees or other plant materials that die or become unkempt; repairs or replacements as needed of the signs, benches, and trash containers; periodic clean-up of litter and other materials deposited within the access areas; and ensuring that the public access signs remain in place and visible. Within 10 days after notification by staff of the Commission, the permittee or any successor or assignee shall correct any maintenance deficiency noted by staff.*

Alan Berger  
Heron Bay HOA  
October 15, 2015  
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On a July 24, 2015 site visit, staff observed maintenance issues with the benches and landscaping located in the seating area/overlook site required by Special Condition II.F.3.d (Public Access Improvements) of the Permit. Please repair the weathered benches and replace the dead and dying plants within 10 days of receipt of this letter, as required by Special Condition II.F.4 of the Permit. After you have corrected these maintenance issues, please provide photographic evidence or request a site visit in order for staff to confirm the requested maintenance activities have been completed.

If you have any questions, please do not hesitate to contact me at (415) 352-3668 or [Maggie.Weber@bcd.ca.gov](mailto:Maggie.Weber@bcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Maggie Weber" with a stylized flourish at the end.

MAGGIE WEBER  
Enforcement Analyst

MSW/gg

Enc. Notice of Application, CC&R Template and Instructions for Preparing a Complete CC&R

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

DATE POSTED: \_\_\_\_\_

# NOTICE OF PERMIT APPLICATION

**NOTICE** is hereby given that Heron Bay HOA has applied for a **PERMIT AMENDMENT** to the **SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION** to:

Amend BCDC Permit No. M1992.057.02 to: (1) install and maintain BCDC public access signage on Bayfront Drive; (2) install bicycle sharrows along the roadbed of Bayfront Drive; (3) build an entry kiosk within the Lewelling circle "bulb planter area"; (4) install "welcome signage" on entry kiosk and the approach; (5) install benches and trash receptacles in the public access area (location not specified); and (6) install 15 daytime parking spaces along Bayfront Drive for public shoreline access.

at a **PROPERTY** known as:

At Lewelling Boulevard and Bayfront Drive, San Leandro, Alameda County.

Comments on the proposed project should be submitted immediately in writing or by contacting the Commission,

Attn: Maggie Weber, Enforcement Analyst at 415-352-3668 or [Maggie.Weber@bcdc.ca.gov](mailto:Maggie.Weber@bcdc.ca.gov)

Permit application, any supplementary materials and notice of any hearings related to the above project,  
are available for review upon request.

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

BCDC PERMIT APPLICATION NO. M1992.057.02

Heron Bay HOA

## CERTIFICATION OF POSTING OF NOTICE

**Maggie Weber**

San Francisco Bay Conservation  
and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, California 94102

RE: Amend BCDC Permit No. M1992.057.02 to: (1) install and maintain BCDC public access signage on Bayfront Drive; (2) install bicycle sharrows along the roadbed of Bayfront Drive; (3) build an entry kiosk within the Lewelling circle "bulb planter area"; (4) install "welcome signage" on entry kiosk and the approach; (5) install benches and trash receptacles in the public access area; and (6) install 15 daytime parking spaces along Bayfront Drive for shoreline access.

*(brief description of project)*

I, Alan Berger on behalf of Heron Bay HOA

*(name of applicant or agent)*

hereby certify that on \_\_\_\_\_

*(date)*

I or my agent or employee posted in a prominent location at or near the project site the Notice of Application provided by the San Francisco Bay Conservation and Development Commission.

Date: \_\_\_\_\_

By: \_\_\_\_\_

*(Signature)*

Title: \_\_\_\_\_

*(Title)*